

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

WILLIAM JOSEPH MOYERS, JR.,

Plaintiff,

v.

No.: 3:07-cv-393
(PHILLIPS/GUYTON)

THOMAS SHUDAN,

Defendant.

MEMORANDUM AND ORDER

This is a *pro se* prisoner's civil rights complaint under 42 U.S.C. § 1983 which is set for a jury trial on July 27, 2009. However, this case has been reassigned from Judge Varlan to Judge Phillips. Consequently, the trial date will be changed from July 27, 2009, to August 12, 2009. Plaintiff is a federal prisoner who alleges that, during his confinement in the Blount County Jail as a federal pretrial detainee, he was assaulted by former jailer Thomas Shudan on January 29, 2007. The matter is before the Court on numerous motions filed by the plaintiff. Defendant has not filed a response to many of plaintiff's motions and the Court deems defendant to have waived his opposition to those motions. *Elmore v. Evans*, 449 F. Supp. 2, 3 (E.D. Tenn. 1976), *aff'd mem.*, 577 F.2d 740 (6th Cir. 1978); E.D.TN. LR7.2.

Plaintiff has filed a motion to amend his amended complaint to correct minor factual errors in paragraphs 68 and 71. Plaintiff's motion to amend [Doc. 34] is **GRANTED**.

Plaintiff moves the Court to issue a subpoena to Blount County Sheriff James Berrong and Captain Dan Neubert to provide him with discovery material. Plaintiff's motion [Doc. 37] is **GRANTED** to the following extent. The Clerk is **DIRECTED** to issue a subpoena duces tecum (Form AO 88B, revised 01/09) to Sheriff James Berrong to produce, within fifteen days of receipt of the subpoena, the pertinent contact information (address, telephone number, and place of employment) of the following individuals, if known to Sheriff Berrong and/or the Blount County Detention Facility: Nurse Kathy Walker, Dr. Calvert, Nurse Danielle Margelowsky, Lt. Rayburn, and inmates John Lowe and Figel Guy Rhea; and to produce the following documents, if in the possession of Sheriff Berrong and/or the Blount County Detention Facility: investigation reports of the incident involving plaintiff on January 31, 2007, including reports or statements taken from staff or inmates, and medical reports and records pertaining to the medical attention plaintiff received on January 31 through February 5, 2007.

Plaintiff's motion for subpoena is **DENIED** in all other respects. Plaintiff's motion for subpoena [Doc. 40] is identical to [Doc. 37] and is **DENIED** as **MOOT**. Likewise, plaintiff's motion to compel discovery materials [Doc. 53] seeks substantially the same information as [Doc. 37] and is **DENIED** as **MOOT**.

Plaintiff moves the Court to subpoena the U.S. Marshals Service to provide information as to the whereabouts of federal prisoner Figel Guy Rhea. The motion [Doc. 38] is **GRANTED** to the extent the U.S. Marshals Service is **ORDERED** to inform the Court, in writing within fifteen days of receipt of this Memorandum and Order, whether Figel Guy

Rhea is in federal custody and, if so, of the BOP Registration Number and location of Figel Guy Rhea.

Plaintiff's motion for issuance of subpoenas [Doc. 39] is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's motions for issuance of subpoenas are **GRANTED** to the extent the U.S. Marshals Service is **ORDERED** to serve subpoenas for trial on the following individuals: Nurse Kathy Walker, Nurse Danielle Margelowsky, Lt. Rayburn, U.S. Marshal Chuck Pittman, Dr. Calvert, Federal Defender Jonathan Moffatt, and Investigator Charles Brown. The Clerk is **ORDERED** to forward the subpoenas prepared by plaintiff, as corrected to indicate the subpoenas are for trial, to the U.S. Marshals Service for service. The motion for subpoenas is **DENIED WITHOUT PREJUDICE** as to the unknown inmates and inmate John Lowe, whose address is unknown.

The motion for issuance of subpoenas is **DENIED** to the extent plaintiff seeks payment of the witness attendance fees by the Court. The plaintiff is responsible for payment of the witness fees. *See Johnson v. Hubbard*, 698 F.2d 286, 289-90 (6th Cir.), cert. denied, 464 U.S. 917 (1983). Plaintiff is advised that a witness is not obligated to obey a subpoena unless it is accompanied by the first day's attendance fee and travel expenses allowed by law. 28 U.S.C. § 1821; Fed. R. Civ. P. 45(c). The per day attendance fee for witnesses is \$40.00 per person, and mileage is \$0.55 per mile.

Plaintiff's motion for subpoena [Doc. 42] is identical to [Doc. 39] and is **DENIED** as **MOOT**. Plaintiff's emergency motions for subpoena for discovery [Doc. 43 and 44] are similar to [Doc. 37] and are **DENIED** as **MOOT**.

Plaintiff moves the Court to order the U.S. Marshals Service to house him in a detention center other than the Blount County Detention Center while plaintiff is in East Tennessee for the trial of this action. The motion [Doc. 45] is **DENIED**. The housing of federal prisoners pending court proceedings is within the discretion of the U.S. Marshals Service and this Court will not interfere with that discretion, absent extraordinary circumstances which are not present in this case. Plaintiff's motion for special housing [Doc. 50] is identical to [Doc. 45] and is **DENIED** as **MOOT**.

Plaintiff has filed a petition for writ of habeas corpus ad testificandum for Christopher McClain, who is a federal prisoner. For good cause shown, plaintiff's petition [Doc. 46] is **GRANTED**. The Clerk is **ORDERED** to issue a writ of habeas corpus ad testificandum to the UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF TENNESSEE to bring Christopher McClain, who is confined in F.C.I. Memphis Federal Prison in Memphis, Tennessee, before this Court at Knoxville, Tennessee on August 12, 2009, at 8:30 a.m., for a trial in the above-entitled cause, and to return said Christopher McClain to said place of confinement, as soon as the case is disposed of.

Plaintiff has filed a motion to exclude at trial certain evidence which he claims the defendant has refused to provide to him during discovery. This is the same evidence which plaintiff seeks to receive from Sheriff Berrong by subpoena duces tecum. Plaintiff's motion to exclude [Doc. 48] is **DENIED WITHOUT PREJUDICE**, and subject to renewal at trial, pending Sheriff Berrong's compliance with the subpoena duces tecum.

Plaintiff moves the Court to appoint counsel to represent him in this matter. The Court has previously denied plaintiff's motion for appointment of counsel and sees no reason to alter that ruling. Plaintiff's motion for appointment of counsel [Doc. 49] is **DENIED**.

Plaintiff has filed a motion to exclude at trial evidence of prior charges against him, which did not result in convictions. Plaintiff's motion [Doc. 52] is **DENIED** to the extent the Court will allow the introduction of evidence which is admissible under the Federal Rules of Evidence.

ENTER:

/s Thomas W. Phillips
UNITED STATES DISTRICT JUDGE